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## THE INNS OF COURT AND CERTAIN CONDITIONS IN AMERICAN LEGAL EDUCATION.<sup>1</sup>

A LAW school teacher of the common law of England, whether in England or in the "kingless commonwealths" on this side of the Atlantic, owes a debt of gratitude to bar associations. It was not in the English universities that the systematic teaching of English law began; "the voice of John Wyclif pleading that English law was the law that should be taught in English universities was a voice that for centuries cried in the wilderness". It was through the professional zeal of legal practitioners, on the Bench or at the Bar, members of a closely related group of bar associations, the Inns of Court, that the law school teaching of our common law began; and it was by these same bar associations that this law school teaching was sustained through the centuries.

Possibly, in days not far in the future, the university law schools of twentieth century America, which now so generally stand aloof from bar associations, will avail themselves of the potential influence for good which these associations of practitioners naturally possess, and once exercised, long and well, in behalf of legal education. It may even be that those who attended the recent annual meeting of the American Bar Association, at Cincinnati, witnessed the beginning of a new era in American legal education. We may be at the dawn of a day when organized university law schools, equipped with trained teachers of law, and organized bar associations, moved by their historic interest in the professional training of American lawyers, and following the constructive ideals of forward-looking leaders of the Bar, will co-operate effectively in a common cause. If so, certain principles of our earliest system of legal education will revive in new force, and with a wider scope.

Broadly considered, our professional education for the Bar shows four widely overlapping stages, and possibly may now

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<sup>1</sup> Address delivered, October 11, 1921, before the Bar Association of Howard County, Indiana.

be entering upon a fifth stage. The first of these stages, and far the longest in duration, was that of organized law school instruction under the immediate control of a central, highly privileged association of members of the active profession—the Inns of Court.

This stage was followed, in both England and America, by a vaguely defined stage of law office instruction. One law student, or a small group of law students, "read" law in the office of some older member of the Bar, and more or less under his instruction. In most cases the method was properly enough described as an apprenticeship in law; sometimes, but rarely, it was rather the relation of a disciple to his master. Many leaders of the Bar have looked back with gratitude on their law office student days.<sup>2</sup> But in the nature of things, law office instruction was a transition stage. It developed naturally, and at an early day in America, although not in England, into the stage of the private law school.

American lawyers grew in importance through the American Revolution, and private law schools sprang up rapidly here and there in America, shortly after the close of the war. There was need of and a wide call for legal education, and in that period of our history the private law school was the most effective response possible. Young men, eager for professional training in the practice of the law came from all parts of the country to attend the law lectures which Judge Reeve gave from year to year, in a small one-story wooden building, his law office, hard by his colonial house, in the village of Litchfield, Connecticut. This Litchfield Law School, the most famous of its class, continued for fifty years, from about 1784 to 1833. Within this period, including 1833, private law schools appeared in nine states, Connecticut, Massachusetts,

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<sup>2</sup> See the testimony of Lord Chief Baron Kelly in 1855. Ames's *Lectures on Legal History*, p. 363. The brief biographies of some 400 Federal Judges which appear in 30 Fed. Cas. often suggest the same kindly memory of such student days. Thomas Jefferson, however, looking at the question in the general, thought that in this law office study the services expected of the student were always "more than the instructions have been worth". See his letter to John Garland Jefferson in 1790. Ford's *Writings of Jefferson*, Vol. 5, p. 181. And see the Report of the Minnesota State Bar Association for 1920, p. 12, confirming Jefferson's view.

New York, Pennsylvania, Maryland, Virginia, North Carolina, Georgia, and Ohio.<sup>3</sup>

Before this date, however, the growing need in America for systematized instruction in law had brought on also the university law school. The call for it was clear enough, but the colleges were not ready. Academic tradition was against the teaching of professional law in our universities, as it had been against the teaching of professional law at Oxford and Cambridge. There were also quasi vested interests, which still continue, in the apprenticeship system.

The first definite move towards university teaching of professional law was due to the untrammeled idealism of Thomas Jefferson. A beginning was made in 1779, with his reorganization of William and Mary College. One of its six "schools" was a school of "Law and Police".

In the same year, 1779, Isaac Royall, a citizen of Massachusetts but a loyalist refugee, made his will in England devising to Harvard College some 2,000 acres of Massachusetts land, to endow "a professor of law in said College or a professor of Physic or Anatomy, whichever the corporation and overseers of said college shall judge best for its benefit". Isaac Royall died in 1781, and a little later there was talk of a law professorship as at Harvard.

But Harvard was not as yet hospitably inclined towards professional education in law. It was only after the corporation had passed out of the control of clergymen into the control of lawyers that the first of our great university law schools was founded.<sup>4</sup>

The year was 1817. Nine years later the idealism of Jefferson resulted in the founding of the law school of the University of Virginia, the first of our State university law schools.

After slow beginnings, the American university law schools, some on private foundations, have grown magnificently.<sup>5</sup>

<sup>3</sup> See Reed's *Training for the Public Profession of the Law* (1921), 128, 431-432. Carnegie Foundation Bulletin No. 15. Law schools, teachers and the active profession are under a lasting obligation to Mr. Alfred Z. Reed for this most valuable and interesting book.

<sup>4</sup> Reed, *Training for the Public Profession of the Law* (1921), 137.

<sup>5</sup> To see ourselves as others see us, reference may be made to Mr. W. Jethro Brown's article on "The American Law School, 21 Law Quart. Rev. (1905) 69.

Standing more and more clearly for the principle that the teaching of professional law is a vocation, and that a law faculty should be made up almost wholly of men who give their entire time to the school, the university law schools have become the dominant type of law schools in America. Side by side with them, however, the private law schools have grown into a large, miscellaneous group of schools in which the teaching of professional law is at best an avocation, with no member of the faculty, as a rule, giving his entire time to the school.

These two classes of present day law schools have had, until recently, a negative characteristic in common. Their development, whether for good or for evil,<sup>6</sup> has been without the active co-operation of the organized profession. The fact is a strange one, all the more strange in that it sets at naught an age long precedent in our system of legal education, and an inherited tradition in both England and America.

From the founding of the Inns of Court unto the present day, one ideal has never entirely faded from the minds of the profession—that the cause of professional education for the Bar is in a peculiar sense the concern of the active profession. In the last fifty years, beginning with the organization of the Association of the Bar of the City of New York, there has been a remarkable growth of state, county, and city bar associations, formed, as their constitutions declare, "to maintain the honor and dignity of the profession". In these associations, especially the State bar associations, one frequently recognized objective has been the improvement of legal education. In many of them, a committee on legal education, is part of the standard form of organization. But hitherto, in America, there has been no strong forward movement by the organized Bar to advance and maintain the standards of legal education.

Mr. John W. Davis, recently our Ambassador to Great Britain, drew the attention of the last meeting of the American Bar Association to the fact that "notwithstanding this Association, there is no such body as the American Bar; that instead, scattered groups constitute the Bars of cities, counties, or

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<sup>6</sup> For the mischief done by some law schools see the Report of the Committee of Legal Education of the Association of the Bar of the City of New York for 1920, and 45 A. B. A. Reports (1920) 475.

states, with a Federal Bar here and there composed in part of the same members, but all united by no tie of common origin or discipline". But in our legal and our political history we move from the smaller unit to the greater. Such a movement appears to be under way in our miscellaneous group of bar associations. The conferences, at recent meetings of the American Bar Association, of the delegates from State and local Bar Associations, give promise of great results. And, as respects a movement by the organized Bar in behalf of legal education, there is evidently a new spirit at work. To use a metaphor which comes, in this connection, from Mr. Root, "the dough is rising".

Edmund Burke, speaking of our legal system, has said: "It has never been old or middle aged or young. In what it has improved it has never been wholly new. In what it has retained it has never been wholly obsolete." Perhaps something of this sort is happening in our system of legal education. On the chance of it, I will ask you to consider the principles which gave to the system of legal education in the Inns of Court its remarkable vitality.

No precise date can be confidently set as the beginning of our historic system of legal education. Its causes run back to the year 1215, to *Magna Carta*, and the movement which ensured a native development of English institutions and the common law of England. One clause of the Great Charter, it will be remembered, required that the common pleas should no longer follow the King but be held in one certain place. An early result was the centralization of the King's Courts near to the palace of the King, at Westminster, a little outside the City of London. Apparently private law schools began to spring up in the neighboring city. But in 1235, an order issued from Henry the Third commanding that no regent of any school of law within the city should thereafter teach law therein. Possibly this was to retaliate upon the churchmen, who were excluding the common law from Oxford and Cambridge. But if, as Coke and Blackstone suppose, the prohibition extended to the teaching of the common law, it was apparently the first direct effort to prepare the way for organized law teaching in close connec-

tion with the courts. A further initial step was in 1292, when a commission from Edward the First directed that students who were "apt and eager" in law studies should be brought from outlying districts and placed in proximity to the courts of Westminster. These students were not left to shift for themselves in lodgings of their own selection within the city. Perhaps the collegiate foundations at Oxford and Cambridge furnished a precedent. Perhaps the trade guilds furnished a precedent; for in these early days "the lawyers like other men had grouped themselves in guilds or guildlike fellowships". "The craft guild", says Mr. Maitland, "regulated apprenticeship; it would protect the public against incompetent artificers, and its own members against unfair competition. So the fellowship of lawyers." But whether with or without a precedent these prospective students of the law of England were placed in hostels, a little beyond the city walls, on the other side of the rapidly flowing Fleet, in a place of gardens and meadows, close to the newly settled courts of the King. In Fortescue's phrase, these hostels "being nurseries of the court were therefore called Inns of Court."

In time the barristers of the King's Courts who gathered in the Inns of Court worked out a long and laborious course of study for the apprentices of the law. He who successfully pursued it received at last a call to the Bar from his Inn, and was admitted to practice in the King's Courts; for the Inns of Court, through methods which are not yet clear, succeeded in making their call to the Bar the only door of admission to practice in the courts of the King.

It is a far flight from the Inns of Court at Westminster to Grand Forks, North Dakota. But at the last annual meeting of the North Dakota State Bar Association, held at Grand Forks last July, there was up for consideration a bill which if passed by the Legislature will give the Bar Association of North Dakota complete control of admission to the Bar in that State, and the discipline of members of the Bar.

Of the character of the professional education which the apprentices of the law received in the English courts, I wish to read a passage from a lecture delivered at Cambridge, England by the late Frederick Maitland, in 1901:

"No English institutions are more distinctively English than the Inns of Court; of none is the origin more obscure. We are only now coming into possession of the documents whence their history must be gathered, and apparently we shall never know much of their first days. Unchartered, unprivileged, unendowed, without remembered founders, these groups of lawyers formed themselves and in course of time evolved a scheme of legal education: an academic scheme of the medieval sort, oral and disputatious. For good and ill that was a big achievement: a big achievement in the history of some undiscovered continents. We may well doubt whether aught else could have saved English law in the age of the Renaissance. What is distinctive of medieval England is not parliament, for we may everywhere see assemblies of Estates, nor trial by jury, for this was but slowly suppressed in France. But the Inns of Court and the Year Books that were read therein, we shall hardly find their like elsewhere. At all events let us notice that where Littleton and Fortescue lectured, there Robert Rede lectures, Thomas More lectures, Edward Coke lectures, Francis Bacon lectures, and highly technical were the lectures that Francis Bacon gave. Now it would, so I think, be difficult to conceive any scheme better suited to harden and toughen a traditional body of law than one which, while books were still uncommon, compelled every lawyer to take part in legal education and every distinguished lawyer to read public lectures."

Maitland's clause, "a system that compelled every lawyer to take part in legal education", gives a leading characteristic of the system of legal education which prevailed in the Inns of Court. Another law writer of our own day has dwelt upon it:—

"The education provided by the Inns of Court", says Mr. Holdsworth, in his *History of English Law*, "was a constant rehearsal and preparation for the life of advocate and judge. All were learners in their various grades. A call to the Bar was but an inception. The Utter-Barrister must learn of the Readers and Benchers as well as assist to teach by the part he took in readings and motes. The learning of the 'ancients' was kept fresh by the queries and the difficulties of the Inner Bar. Even the Benchers themselves were, as compared with the Sergeants and Judges, but apprentices in the law."<sup>7</sup>

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<sup>7</sup> 2 Holdsworth, *History of English Law*, 428.

The system of legal education, slowly developing from vague beginnings in the thirteenth century, continued, with lapses here and there, until after the middle of the seventeenth century. It had a longer life by far, than any other system of legal education known as a working system in Anglo-American law, or all of them together.

The strength of this longlived educational system lay apparently in its practical recognition of three vital principles in legal education.

In the first place, a law student is twice a law student if he pursues his studies not only in an atmosphere of legal thought but also in a community of legal thought and endeavor. The life in the Inns of Court, during several centuries, was collegiate in the best sense; characteristically, it was not a boarding house or dormitory existence. The members of each Inn—its students, or apprentices, and its barristers, readers, and benchers—lived together and argued together in a companionship of legal study. There were daily discussions of live, although technical, problems in the developing law of England, with eager debatings in the moots, lectures by leaders of the Bar, and regular attendance upon the neighboring courts at Westminster.

Nor were these law students mere auditors in a court room. Various passages in the books suggest a close and active relation between the apprentices and the court. The earliest Year Books may have been the note-books of the law students, written when as yet there were no up to date treatises on English law, and the direct way to the doctrine prevailing in the courts was to attend the courts and take case notes.

Apparently a part of the court, "Le Crib", was reserved for the use of the law students; and the discussions in Le Crib have left their mark in the Year Books. A Chief Justice of the Common Pleas in 1305, puzzling over a hard case, charges that these same law students had manufactured it "to find out what judgment we shall give on the writ".<sup>8</sup>

In the second place these ancient Inns of Court stood for the sound principle that a fully organized system of legal education does not stop with admission to the Bar. Our law schools of to-

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<sup>8</sup> See 2 Holsworth History, 265.

day, even the best of them, drop their students, so far as organized educational efforts are concerned, when the law degree, or at most a post graduate degree, has been attained. The Inns of Court regarded admission to the Bar as but the beginning of a further course of systematized professional training. "A call to the Bar was but an inception". In a graduated profession "all were learners in their various grades".

In the third place the Inns of Court recognized and for several centuries carried into effect the principle that responsibility for the personal and educational fitness of candidates for admission to the Bar rests upon the Bar itself in its organized capacity, and that, as a result of this, the organized Bar has the right and the duty, after thorough tests, to control the admission of new members. There is a good deal of historical significance in the phrase "call to the Bar". Back of it lies an ideal: the practice of the law is not a private business, but a public profession; a lawyer is a minister of justice, and his right to practice law, the Constitution of one great State to the contrary notwithstanding, arises only when he has been called, after proper tests of his fitness, into the work of this ministry.

Because of these principles, the Inns of Court had great elements of strength. Their law was "tough law"; and in their system there was something of the toughness of the native oak. But they were weak where our leading university law schools are strong; they were weak on the teaching side. The leading lawyers of their times, names which are still famous in Anglo-American legal history, took active part in the readings of the Inns—Littleton and Fortescue, Coke and Bacon, to mention a very few. But what leader of the Bar in active career, what judge in term time, can undertake also the continuous systematic education of a class of law students, and do justice to both? Here and there it has been done, for a short time. But the rule stands, enforced by a multitude of instances, that no man can serve two masters. The most noteworthy instance in all our legal history is to be found in these same Inns of Court. With all their elements of strength, they fail in the latter end. The teaching in the Inns, conducted by leaders of the Bar, becomes a form, and before the American Revolution the Inns had ceased to be a teaching agency.

On the teaching side, the American Law Schools have gone immeasurably beyond the teaching conceptions of the Inns of Court. Law with them was not to be taught as a rational discipline. But in other respects the old but ever new ideals of the Inns still beckon us on. The principle of a community of legal thought and endeavor as an ideal in law student life is realized in comparatively few of our 140 law schools, and ignored in most. The principle that law schools should organize, in some worthy form, courses of legal study for the further education of members of the Bar is hardly more than the dream of a law teacher here and there. As respects the principle that the Bar itself, in its organized capacity, operating through a federation of Bar Associations, should stand sponsor for the personal and the educational fitness of applicants for admission, we have a dawning hope.

The action of the American Bar Association at Cincinnati last September is, in this respect, the most notable achievement in American legal education in the last twenty years. It may be that out of old fields will come a bounteous crop of new corn.

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